



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


Washington, D.C. 20460

OFFICE OF
AIR AND RADIATION

June 17, 2021

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Alejandra Nunez  Alejandra Nunez
Deputy Assistant Administrator for Mobile Sources

Digitally signed by Alejandra Nunez
Date: 2021.06.17 23:35:19 -04'00'

TO: Joseph Goffman
Acting Assistant Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that will have a direct and predictable effect upon any of the following entities as a specific party:

| RECUSAL LIST – SPECIFIC PARTY MATTERS | | |
|---------------------------------------|---------------------------|---------------------------------|
| Amazon | Netflix | SunRun Inc. |
| Kering | Peloton Interactive, Inc. | Uber Technologies, Inc. |
| Microsoft | QUALCOMM | Zoom Video Communications, Inc. |

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

| RECUSAL LIST – SECTORS | |
|--|------------------------------------|
| Communication Services (Entertainment, and Interactive Media and Services) | Consumer Services |
| Electrical Equipment (limited to Solar Energy Systems) | Food and Staples Retailing |
| Internet and Direct Marketing Retail | Leisure Products |
| Semiconductors | Software and Services |
| Technology Hardware and Equipment | Textiles, Apparel and Luxury Goods |

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employers, **Sierra Club**, **Coalition for Green Capital**, or **the Clean Energy Federal Credit Union**, is a party or represents a party. Under the terms of the Ethics Pledge, this recusal lasts for two years from the date that I joined federal service, or until January 31, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”¹ Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect

¹ See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics. Thus, I will not participate in the following matters:

| CASE NAME: | CITATION: |
|--|--|
| Union of Concerned Scientists, <i>et al.</i> v. National Highway Traffic Safety Administration | No. 19-1230 (D.C. Cir.) (lead case) |
| Sierra Club, <i>et al.</i> v. Environmental Protection Agency, <i>et al.</i> | No. 19-1243 (D.C. Cir.) (consolidated) |
| Competitive Enterprise Institute, <i>et al.</i> v. National Highway Traffic Safety Administration, <i>et al.</i> | No. 20-1145 (D.C. Cir.) (lead case) |
| Natural Resources Defense Council, <i>et al.</i> v. Andrew R. Wheeler, <i>et al.</i> | No. 20-1168 (D.C. Cir.) (consolidated) |
| Truck Trailer Manufacturers Association v. Environmental Protection Agency, <i>et al.</i> | No. 16-1430 (D.C. Cir.) |
| American Lung Association, <i>et al.</i> v. Environmental Protection Agency, <i>et al.</i> | No. 19-1140 (D.C. Cir.) (lead case) |
| Appalachian Mountain Club, <i>et al.</i> v. Environmental Protection Agency | No. 19-1166 (D.C. Cir.) (consolidated) |
| Biogenic CO2 Coalition v. Environmental Protection Agency, <i>et al.</i> | No. 19-1185 (D.C. Cir.) (consolidated) |
| State of North Dakota v. Environmental Protection Agency | No. 15-1381 (D.C. Cir.) |

DIRECTIVE AND CONCLUSION

To avoid participating in matters from which I am recused, please direct them to the attention of **Ann Ferrio, Chief of Staff**, without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Elizabeth Shaw, Deputy Assistant Administrator
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources
Ann (Campbell) Ferrio, Chief of Staff
Eunjung Kim, Special Assistant
Justina Fugh, Director, Ethics Office

From: [Mosley, Ferne](#)
To: [Fugh, Justina](#); [Griffo, Shannon](#)
Subject: Fwd: Biden Ethics Pledge - Signed
Date: Monday, February 08, 2021 9:16:29 AM
Attachments: [A Nunez-Biden Ethics Pledge for digital signature.pdf](#)

Sent from my iPhone

Begin forwarded message:

From: "Nunez, Alejandra" <Nunez.Alejandra@epa.gov>
Date: February 5, 2021 at 9:24:59 PM EST
To: "Mosley, Ferne" <mosley.ferne@epa.gov>
Subject: Biden Ethics Pledge - Signed

Hi Ferne,

Thank you so much again for your guidance. The Ethics training was incredibly useful.

Attached please find my signed copy of the Ethics pledge.

Many thanks, and have a great weekend.

Ale

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
2. *Revolving Door Ban — All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
4. *Revolving Door Ban — Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
6. *Revolving Door Ban — Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Nunez, Alejandra

Digitally signed by Nunez, Alejandra
Date: 2021.02.05 21:21:25 -05'00'

Signature

Name (Type or Print):

Alejandra Nunez

February 5, 2021

Date

From: [Fugh, Justina](#)
To: [Chase, Joann](#); [Conger, Nicholas](#); [Diaz, Catherine](#); [Efron, Brent](#); [Frey, H](#); [Goldberg, Ruby](#); [Michalos, Maria](#); [O'Brien, Grant](#); [Nunez, Alejandra](#); [Kim, Eun](#); [Sabater, Juan](#); [Waterhouse, Carlton](#); [Engelman-Lado, Marianne](#)
Cc: [Sinceré Harris](#); [Mercado Violand, Fernando](#)
Subject: Hello from EPA Ethics!
Date: Monday, February 01, 2021 9:33:00 AM

Hi there,

My name is Justina Fugh, and I'm the director of EPA's Ethics Office. Welcome aboard! In your orientation materials, Patricia Moore asked you to contact me about your initial ethics training. My staff and I provide that training to you "in person" (now virtually) so you needn't click on the ethics training module link she gave you. Instead, you'll get virtual training with us on Thursday, February 4 from 12 noon to 1 pm. Because we've got a baker's dozen of you starting today, we'll offer two initial ethics training sessions simultaneously. With fewer people on each call, you'll have a greater opportunity ask questions. I'll randomly assign you to a session, and you'll get a Teams invitation from me later today.

In addition, each of you is required to file a public financial disclosure report electronically. I will assign you that report today, using your EPA email address. But I noticed that a couple of you may have emails that don't necessarily correspond to your preferred names so you might be looking to change your email address (don't ask me how to do that; I don't know!). If you are going to want to change your email address, then let me know. For now, we can set up your account using your personal email address and then ask to have the account merged with your EPA email once you've got that settled. That report is due 30 days from your start date, and you can be assessed a late filing fee, so this is one of those important things you just have to do.

Again, welcome to EPA and let me know if you have any specific questions before we connect on Thursday!

Happy Monday!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Chase, Joann](#); [Engelman-Lado, Marianne](#); [Frey, H](#); [Michalos, Maria](#); [Nunez, Alejandra](#); [Waterhouse, Carlton](#)
Cc: [Mosley, Ferne](#); [Griffo, Shannon](#); [Clarke, Victoria](#); [Ross, Margaret](#)
Subject: Initial Ethics Training (alas, it's mandatory)
Attachments: [Ethics Briefing Packet for Political Appointees.pdf](#)
[Biden Ethics Pledge for digital signature.pdf](#)

Welcome to EPA and your initial ethics training! By regulation, this session is one hour long, so please be present for the entire time. Your session will be led by Ferne Mosley, a senior attorney with more than 20 years of federal ethics service. Attached is the briefing material that she'll reference together with the Biden ethics pledge that you must sign and return to ethics@epa.gov <<mailto:ethics@epa.gov>>. All of you are required to file a public financial disclosure report and, before this session, you'll be notified by email of that assignment.

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting (b) (6)

[REDACTED]

Or call in (audio only)

+1 202-991-0477, (b) (6) # <tel:+12029910477,(b) (6) #> United States, Washington DC

Phone Conference ID: (b) (6) #

Find a local number <<https://dialin.teams.microsoft.com/556a4b78-4afd-4fe6-b721-1d903e8cdaa6?id=739273262>> | Reset PIN
<<https://mysettings.lync.com/pstnconferencing>>

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

Learn More <<https://aka.ms/JoinTeamsMeeting>> | Meeting options <https://teams.microsoft.com/meetingOptions/?organizerId=e9a372fe-7f51-48e7-9e3e-972b728b9f24&tenantId=88b378b3-6748-4867-acb9-76aacbeca6a7&threadId=19_meeting_OTMwY2M3OGYtZjk1ZS00ZWExLWFhMjUtZGIxOGFkMDMwMTA1@thread_v2&messageId=0&language=en-US>

ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.
2. *Revolving Door Ban — All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.
3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:
 - (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;
 - (b) participate in the specific issue area in which that particular matter falls; or
 - (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.
4. *Revolving Door Ban — Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.
5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.
6. *Revolving Door Ban — Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.
7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.
8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.
9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Signature _____

_____, 20____
Date

Name (Type or Print): _____

Ethics Briefing

1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

| | |
|--|---|
| Jim Payne Designated Agency Ethics Official (202) 564-0212 payne.james@epa.gov | |
| Justina Fugh Alternate Agency Ethics Official and Director of Ethics Office (202) 564-1786 fugh.justina@epa.gov | |
| Shannon Griffo Ethics Attorney (202) 564-7061 griffo.shannon@epa.gov | Margaret Ross Ethics Officer (202) 564-3221 ross.margaret@epa.gov |
| Jennie Keith Ethics Officer (202) 564-3412 keith.jennie@epa.gov | Victoria Clarke Ethics Attorney 202-564-1149 clarke.victoria@epa.gov |
| Ferne Mosley Ethics Attorney (202) 564-8046 mosley.ferne@epa.gov | OGC/Ethics All Staff and Helpline (202) 564-2200 ethics@epa.gov |

You can also visit the [OGC/Ethics SharePoint site](#) for more information.

2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your [basic obligation of public service](#) that we'll address in this briefing material.

3. The President's Executive Order (for political appointees only)

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

If you were a federally registered lobbyist or registered foreign agent in the past 2 years:

- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.
- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.

While you are a federally employee:

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.
- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.
 - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).
- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence and experience.
- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

When you leave federal service, you are agreeing to the following:

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.
- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.
- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.
- You will not engage in any activity on behalf of a foreign government or foreign political party

that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

4. Financial Disclosure Reporting

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over \$1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

5. Attorney Client Privilege & FOIA

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

6. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

7. Appearance of a Loss of Impartiality

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an "appearance problem" by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

8. No representation back to the federal government

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statutes, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

9. Acceptance of Gifts

Be careful of any gift from people outside the Agency, particularly those that are worth more than \$20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can't take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding \$10 from EPA employees, nor give gifts exceeding \$10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

10. Attendance at Widely-Attended Gatherings (ethics check required)

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a "widely attended gathering" exception of the gift rule. You can't make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclosure report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

IMPORTANT NOTE about Embedding Ethics into Your Calendaring Process

Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

11. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See <http://intranet.epa.gov/ogc/ethics/travel.htm> . Prior to the pandemic, OGC/Ethics accepted over \$1 million each year in discretionary travel paid by non-federal sources.

12. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

13. Political Activities

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

14. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is considered "indirect lobbying" and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

15. Use of Government Personnel and Resources

EPA policy permits employees to “limited use” of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a “good cause”). They also cannot use the internet connection for gambling or to access pornography. See EPA’s [Limited Personal Use of Government Equipment Policy](#). Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

16. Outside Activities

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency’s ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA’s Supplemental Ethics Regulations at [5 C.F.R. § 6401.103](#). Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you’ve been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA’s general subject matter area, industry, or economic sector primarily affected by EPA’s programs and operations. [5 C.F.R. § 2635.807\(a\)\(2\)\(i\)\(E\)\(3\)](#).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is \$29,595. See [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.304](#). This amount changes each year;
- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to [5 C.F.R. § 2635.804\(b\)](#) and [5 C.F.R. § 2636.305](#);
- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. [See 5 C.F.R. § 2636.306](#); and
- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). [See 5 C.F.R. § 2636.307](#).

17. Ethics Obligations of Supervisors

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at [5 C.F.R. § 2638.103](#):

Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the [Standards of Conduct](#) and that subordinates know how to contact [agency ethics officials](#). Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at ethics@epa.gov.

18. Seeking Employment

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

19. Negotiating for Employment

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.

20. Post-Government Employment - Representational Restrictions

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back" means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee "cooling off restriction" – on any matter

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is [\\$172,395 per year](#) (excluding locality pay). If you make more than that (before locality pay), then you are a "senior employee" and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a "senior employee" and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh **Justina Fugh** Digitally signed by Justina Fugh
Date: 2021.01.22 12:07:49
-05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² **Filing a late report will result in a \$200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.³ **Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|--|---|
| OGE 278e - New Entrant reports | Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | No later than May 15 |
| OGE 278e – Termination reports | No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports ⁵ | The <i>earlier of</i> 30 days after learning of a transaction or 45 days of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| | Periodic Transaction Report | Annual and/or Termination Report |
|---|-----------------------------|-----------------------------------|
| Investment Assets | Report on the OGE 278-T? | Report on Part 7 of the OGE 278e? |
| Transactions of \$1,000 or less | | |
| • Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes ¹ |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds" ² | No | Yes |
| • Any asset in which the transaction amount is \$1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust ³ | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

¹ Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

² To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

³ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation

NOTIFICATION OF NEGOTIATION OR AGREEMENT

Your full name

Your telephone number*

Date negotiation or agreement began

Your Title / Office / AAship or Region

Your email address*

Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation

** Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

- | | Yes | No | |
|----|--------------------------|--------------------------|---|
| 1. | <input type="checkbox"/> | <input type="checkbox"/> | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| 2. | <input type="checkbox"/> | <input type="checkbox"/> | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| 3. | <input type="checkbox"/> | <input type="checkbox"/> | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements?
See page 2.

For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.

Sign and submit to ethics@epa.gov:

Your signature

OGC/Ethics Use Only:

Statement 1: EPA’s programs, policies, or operations affect the non-federal entity with which I am seeking employment.

If your answer is “yes” to any of the following questions, then you must answer “yes” to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check “yes” to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will have to check “yes” to statement 3.

- Will the work you do affect the sector? Don’t concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues’ projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

Need help answering these statements? Contact ethics@epa.gov to discuss.

Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

Political activity means an activity “directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group.”

| Type of Activity | PAS* | Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other | Career SES, ALJs |
|---|------------|--|--------------------------|
| Personal (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work | Yes | Yes | Yes but nonpartisan only |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| Affecting Official Resources | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| Fundraising | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

*PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service

EPA Ethics Program

Counseling Practice Area:

Vetting Invitations

Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ♦ Gifts ♦ Fundraising ♦ Political Activity ♦ Endorsements
President's Ethics Pledge ♦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

When:

Upon the appointee's start of EPA service

Where:

Through coordination in the principal's front office and immediate staff

Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

Executive Order on Ethic Commitments by Executive Branch Personnel

JANUARY 20, 2021 • [PRESIDENTIAL ACTIONS](#)

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

“I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

“Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

“1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

“6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

“7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

“8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate’s qualifications, competence, and experience.

“9. Assent to Enforcement. I acknowledge that the Executive Order entitled ‘Ethics Commitments by Executive Branch Personnel,’ issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.”

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) “Executive agency” shall include each “executive agency” as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that “executive agency” shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) “Appointee” shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) “Gift”:

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) “Covered executive branch official” and “lobbyist” shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service

provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

- (i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;
- (ii) the uniqueness of the individual's qualifications to meet the government's needs;
- (iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and
- (iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

- (i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;
- (ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;
- (iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and
- (iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.

From: [Carbonell, Tomas](#)
To: [Nunez, Alejandra](#); [Griffo, Shannon](#)
Cc: [Campbell, Ann](#)
Subject: RE: Administrator's meeting with environmental groups tomorrow
Date: Thursday, April 29, 2021 6:31:04 PM

Thank you Ale and Shannon!

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, April 29, 2021 6:08 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Administrator's meeting with environmental groups tomorrow

I should have copied Ann in this communication. My apologies.

From: Nunez, Alejandra
Sent: Thursday, April 29, 2021 5:55 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Administrator's meeting with environmental groups tomorrow

Thank you very much, Shannon. I just checked in with the OA about this. It does look like the meeting will cover matters of general applicability. The topics they want to discuss are clean energy and vehicles, at a very high level.
Many thanks for your guidance.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, April 29, 2021 4:59 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Re: Administrator's meeting with environmental groups tomorrow

Hi Ale,

I can't tell what the subject matter of the meeting is, but the topic is likely a matter of general applicability (rule or policy) or even broader "matters." And there are several participants representing diverse interests (organizations with distinct missions and various perspectives). So as long as it's not about a specific party matter, then yes, this meets the exception in the Ethics Pledge and you may both attend despite the presence of your former employers.

Thanks,
Shannon

Sent from my iPhone

On Apr 29, 2021, at 3:56 PM, Nunez, Alejandra <Nunez.Alejandra@epa.gov> wrote:

Hi Shannon,

I hope this message finds you well. Tomas and I (along with others) just received an invitation to join Administrator Regan tomorrow morning (11 AM) in a roundtable with the CEOs of several environmental organizations, which include our former employers. I believe we would be allowed to attend (per the rules we had discussed earlier), but still wanted to flag this for you.

Many thanks.

Ale (and Tomas)

List of NGO attendees:

- John Podesta, Center for American Progress – CAC Co-Chair
- Fred Krupp, Environmental Defense Fund – CAC Co-Chair
- Margie Alt, Climate Action Campaign – facilitates conversation
- Deb Brown, American Lung Association
- Collin O'Mara, National Wildlife Federation
- Peggy, Shepard, WE ACT for Environmental Justice
- Abbie Dillen, Earthjustice
- Wendy Wendlandt, Environment America
- Kathleen Welch, Corridor Partners
- Kathy Rest, Union of Concerned Scientists
- Mike Brune, Sierra Club
- Mitch Bernard, Natural Resources Defense Council

From: [Nunez, Alejandra](#)
To: [Fugh, Justina](#)
Cc: [Griffo, Shannon](#)
Subject: RE: confirmation of our conversation today
Date: Monday, April 12, 2021 10:55:58 PM

Thank you so much, Justina. Much appreciated!

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, April 12, 2021 10:31 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: confirmation of our conversation today

Hi Ale,

I don't have any concerns with your taking the meeting with the Truck & Engine Manufacturers Association. According to their [member list](#), (b) (6) is not a member. So there is no conflict for you.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, April 12, 2021 9:38 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: confirmation of our conversation today

Thank you very much, Justina, for your guidance and for this very helpful confirmatory message.

I have a follow-up question. I am looking at my calendar and we have a meeting with the Truck and Engine Manufacturers Association toward the end of the day tomorrow.

Given the conversation we had regarding trade associations, is it fine for me to attend the meeting, or should I refrain from doing so for the time being?

Many thanks again for all your help.

Kind regards,

Ale

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, April 9, 2021 4:29 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: confirmation of our conversation today

Hi Ale,

Thanks for calling today, and thanks especially for your very kind words of appreciation for Shannon Griffo. I absolutely agree with you that she's terrific! I'm writing to confirm our conversation and copying Shannon so she knows (not just to embarrass her with compliments).

Participation in rulemaking, including review of draft preamble language

Because you previously participated in litigation about an Agency rule, you have been advised and understand that you cannot now "switch sides" and participate on behalf of the United States on that same litigation. But we have advised you that, in federal ethics, there is a distinction between a specific party matter (i.e., the litigation) and a matter of general applicability (e.g., any rulemaking undertaken by the Agency). The litigation at issue sought reconsideration of a rule and now, in this new administration, the EPA has decided as a policy matter to propose a new rule. You are permitted to work on the new rule. The reason is that your restriction is limited to the specific party matter itself, which is the litigation, not extended to what the agency will do as a policy matter as a result of that litigation.

You contacted OGC/Ethics because, in reviewing the proposed preamble, you noticed that it explains factually how the EPA is, in effect, granting the petition for reconsideration. You do not intend to comment on that portion of the proposed preamble because you did not participate in the events that led to this administrative decision. I reassured you that simply because the language is in the preamble does not preclude you from continuing to participate in the rulemaking. You may certainly read that language as part of the preamble because the decision has been made, and you correctly recused yourself from any involvement in that decision. What you are doing now is working on the rulemaking – exactly as you should – which is quite different from participating in deciding how to resolve that litigation. I see no ethics concerns with your continued participation in this rulemaking, including reviewing the preamble.

Attendance in a meeting with trade associations

You recently attended a couple of meetings that you described as "meet and greet" sessions with trade associations (e.g., the Motor & Equipment Manufacturers Association and the Manufacturers of Emission Controls Association). To the best of your knowledge, EPA did not initiate these meetings. Although their members are not directly regulated by EPA, these

associations have a secondary interest in EPA rulemaking and sought this meeting to share their perspective over a wide range of policy matters, including possible rulemaking. These meetings were not substantive in nature and did not require you to participate personally and substantially. You are, however, concerned that one of your imputed interests, (b) (6) may be a member of those trade associations. You have been previously advised by Shannon that, because EPA does not directly regulate (b) (6), you do not have a direct financial conflict, even though your imputed ownership interest is above the regulatory exemption level for participation in matters of general applicability. Shannon has advised you, and you have agreed, to consider divestiture. Given that the trade associations have already confirmed their interest in EPA activities, that suggested path is the right one.

Your participation in the meet and greets, thus far, has not crossed any line. Next week, you and Shannon can move forward with your request for a certificate of divestiture for the (b) (6).

Thanks for reaching out! It was lovely to talk to you, and I'm sorry that it seems to take me all day to actually send confirmatory emails!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Griffo, Shannon](#)
To: [Nunez, Alejandra](#)
Subject: Information on a Certificate of Divestiture
Date: Friday, March 12, 2021 3:15:00 PM
Attachments: [Certificate of Divestiture Fact Sheet.pdf](#)
[Smooth Sales Pamphlet.pdf](#)

Hi Ale,

Here is some additional information on the Certificate of Divestiture (CD) process. As we discussed, a CD may be possible for any assets that are *likely* to present conflicts. A CD will allow you to sell the conflicting asset to purchase something else, but any capital gain consequences will be deferred. Please note that a CD is not always possible. If you will not get a capital gain or if the asset is held in an IRA, then you are not eligible for a CD. You also can't sell the asset and then seek a CD. The process typically takes a few weeks and must be obtained from another federal agency, the Office of Government Ethics. And if you wanted to do more reading, you can find the applicable regulations for CDs at 5 C.F.R. Part 2634, Subpart J.

I sent your 278 back to you in Integrity with my comments. And we can chat more next week about all this. I'll also be sure to have an answer to your outside activity question.

Have a great weekend!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

CERTIFICATES OF DIVESTITURE

As an executive branch employee, your agency or the Office of Government Ethics (OGE) can direct you to sell, or otherwise divest, an asset in order to avoid a conflict of interest or the appearance of one. If selling the asset will result in a capital gain, you may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements. (Note, however, that a special government employee is not eligible.)

You, your spouse, and your dependent or minor child are eligible to request a Certificate of Divestiture. A trustee is also eligible when the asset is held in a trust, except in certain cases in which ineligible persons are also beneficiaries of the trust. The person requesting a Certificate of Divestiture (*i.e.*, you, your spouse, your dependent or minor child, or a trustee) must commit in writing to divesting the asset even if a Certificate of Divestiture is not issued.

A Certificate of Divestiture allows you to defer the payment of capital gains tax by reinvesting the proceeds of a sale into "permitted property."

To request a Certificate of Divestiture, contact your agency ethics official. If your agency supports the request, your agency ethics official will assemble the necessary documents and submit the request to OGE. OGE will then review the submission to determine whether (1) the request meets applicable procedural requirements and (2) whether divestiture is reasonably necessary to avoid a conflict of interest. OGE will either issue a Certificate of Divestiture to you through your agency ethics official or notify your agency ethics official that your request has been denied.

Do not sell the asset until your agency ethics official provides you with the Certificate of Divestiture or notifies you that OGE has denied your request. A Certificate of Divestiture is valid only if obtained

*A Certificate of Divestiture is valid only if obtained **before** selling an asset.*

before selling an asset. Within 60 days of the sale, you must reinvest the proceeds of the sale in "permitted property." Permitted property is limited to U.S. government obligations (*i.e.*, Treasuries), diversified mutual funds, and diversified exchange-traded funds.

For this purpose, "diversified" means the fund does not have a stated policy of concentrating in any industry, business, single country other than the U.S., or the bonds of a single state within the U.S.

When you file your taxes, complete part IV of IRS Form 8824 to defer payment of capital gains on the sale of the asset pursuant to a Certificate of Divestiture. You will need to pay the deferred capital gains later when you sell the permitted property.

Contact your agency ethics official for more information about Certificates of Divestiture. Note that OGE and your agency ethics official are not able to provide tax advice. Please consult your own tax advisor instead if you need guidance as to tax matters. Your tax advisor should consult 26 U.S.C. § 1043 and 5 C.F.R. part 2634, subpart J.

A Certificate of Divestiture is not an employee benefit; it is designed to reduce the financial burden of complying with ethics laws.

SMOOTH SALES

A BEGINNER'S GUIDE TO CERTIFICATES OF DIVESTITURE

Introduction

If you are an executive branch employee of the Federal Government or plan to become one, at some point you may have to sell certain assets to avoid a conflict of interest or the appearance of a conflict. Under tax rules, the sale of an asset may cause you to have a taxable capital gain which must be reported to the Internal Revenue Service. However, to make it easier for you and your family to comply with ethics rules, the tax laws provide that before you sell your asset, the Director of the Office of Government Ethics (OGE) may issue a Certificate of Divestiture (called a CD) which will allow you to defer the capital gains tax. The CD does not eliminate the capital gains tax; it simply defers payment of the tax to some future date.

The Office of Government Ethics is the agency that administers the CD program. The Director of OGE issues CDs to employees through their designated agency ethics officials.

This pamphlet provides an overview of the CD program. It contains answers to some questions often asked by employees who are required to divest property because of a conflict of interest. This pamphlet does not cover every issue that may arise, and it is not a substitute for counseling. For specific advice about your situation, you should consult your designated agency ethics official.

Frequently Asked Questions

Can I get a CD any time I sell property?

No. A CD can be obtained only if:

- ☐ you have not yet sold the property;
- ☐ the sale is required to eliminate or prevent a conflict of interest;
- ☐ there would be a capital gain; and
- ☐ the request is submitted through your designated agency ethics official and approved by the Director of OGE.

Requests for CDs are considered on a case-by-case basis and may not always be approved. If your request involves a complicated situation, such as when the property to be sold is held in a trust, you should talk to your designated agency ethics official or OGE as soon as possible.

Who is eligible for a CD?

- ☐ Officers and employees of the executive branch of the Federal Government, except a person who is a "special Government employee," as defined in 18 U.S.C § 202;
- ☐ The spouse or minor or dependent child of such persons; and
- ☐ Under certain circumstances, a trustee holding property in a trust.

How do I apply for a CD?

☐ You must make a written request to your designated agency ethics official that includes a commitment to divest within a specified time period.

☐ Your designated agency ethics official then sends your request to the Director of OGE with:

- 1 a description of the property to be sold;
- 2 a statement from your designated agency ethics official indicating that the divestiture is necessary; and
- 3 if you file a financial disclosure report, a copy of your report. If you do not file a financial disclosure report, your designated agency ethics official must submit a memorandum that contains the information required to be disclosed in such a report.

What are the time requirements for requesting a CD?

- ☐ If you are divesting property because of an ethics agreement, your designated agency ethics official must submit your request and the required materials to OGE within three months of the date of the ethics agreement.
- ☐ If you are selling property required to be divested by statute, regulation, or executive order, your designated agency ethics official must submit your request and the required materials to OGE within

three months and ten days after the requirement becomes applicable.

What should I do once I receive the CD?

You must sell the property described in the CD within the required time frame and reinvest in so-called “permitted property” within 60 days, including the date of sale. Keep the Certificate and file it with IRS Form 8824 along with your Federal income tax return for the year in which the sale took place.

In what “permitted property” must I reinvest?

- ☐ United States obligations, such as Treasury bills, bonds, and notes; or
- ☐ open-end diversified mutual funds.

Note that when you sell permitted property or a United States obligation matures, you will incur the capital gains tax that was deferred.

Where can I learn more about CDs?

You can consult with your designated agency ethics official or OGE

with any questions regarding CDs or the CD program. However, since your agency ethics official and OGE cannot provide you with tax advice, you should ask your personal tax advisor, accountant, or attorney if you have questions about the tax implications of a CD. They can find detailed information at:

- ☐ Section 1043 of the Internal Revenue Code of 1986; and
- ☐ Regulations starting at 5 C.F.R. § 2634.1001.

SMOOTH SALES

A BEGINNER’S GUIDE TO CERTIFICATES OF DIVESTITURE



U.S. Office of Government Ethics

From: [Griffo, Shannon](#)
To: [Nunez, Alejandra](#)
Subject: RE: Draft CD package - letter for your signature
Date: Friday, April 23, 2021 9:13:00 AM
Attachments: [CD Request Letter - Alejandra Nunez.pdf](#)

You should be able to click next to your name at the top and digitally sign it. Hopefully that works!

I have to sign off today at 1:00pm, but am available until then or anytime Monday morning. Just let me know when you'd like to chat.

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, April 22, 2021 9:55 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Draft CD package - letter for your signature

Thank you very much, Shannon. I looked at the CD request and the letter. Everything looks good. I, however, could not figure out how to set up the digital signature. I would appreciate your help with this, so I can send the signed copy back to you.
Also, would you have a few minutes to check-in tomorrow afternoon or Monday morning? I have a question in connection with certain meetings we will hold next week.
Many thanks.
Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Wednesday, April 21, 2021 2:50 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: Draft CD package - letter for your signature

Hi Ale,

Attached is a draft of the CD request, as well as the letter that I need you to sign. I'm happy to set up the letter for digital signature if you need assistance with that.

You can also take a quick look at the CD request and let me know if everything accurately reflects what we've discussed (e.g., number of shares owned; divestiture will incur capital gains and not ordinary income; the shares are not held in a tax deferred account/IRA etc.).

Once I get the signed letter back from you, I'll have Jim sign the request then I'll send the package over to OGE.

Thanks!
Shannon

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From: [Nunez, Alejandra](#)
To: [Fugh, Justina](#)
Subject: RE: Few minutes to chat?
Date: Friday, April 09, 2021 9:51:57 AM

Will do. Many thanks, Justina!

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, April 9, 2021 9:51 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Few minutes to chat?

Hi Ale,

Oh, yes, of course! I'm free now until 11 as well. Feel free to ping me on Teams when you're free!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Friday, April 09, 2021 8:06 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Few minutes to chat?

Good morning, Justina,

I hope this message finds you well.

I am writing to ask if you would have a few minutes to talk this morning (sometime between 9:15-11 AM ET). I was hoping to ask you a question related to recusals, which I know you have already discussed with Shannon (who is out today) and others in my team. I would like to get further clarification on one issue. It should only take a few minutes.

Please let me know if this would be feasible.

Thank you so much.

Ale Nunez

From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: Follow-up from OGC/Ethics - financial conflicts of interest
Date: Friday, February 26, 2021 9:19:47 AM

Thank you very much, Shannon. This is very helpful. I appreciate your guidance. I submitted my public financial disclosure report for your review. I think I filled out everything correctly, but please let me know if you have any questions.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Wednesday, February 24, 2021 9:13 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: Follow-up from OGC/Ethics - financial conflicts of interest

Hi Ale,

As promised, here is more information about financial conflicts of interest and the exemption levels. After you've submitted your public financial disclosure report, I'll flag certain interests (e.g., above the regulatory thresholds) and take a closer look at whether any of those interests could possibly be affected by the performance of your official duties.

Thanks,

Shannon

Why Do We Raise Concerns?

A criminal statute, 18 U.S.C. §208(a), bars you from participating in any "particular matter" that affects any of your own interests or any imputed interest (e.g., spouse or dependent children). Your interests include not only ownership interests (e.g., stock, bonds, mutual funds) but also the interests of outside entities (e.g., any organization in which you are serving as an officer, director, or trustee) and prospective employers (any entity with which you are seeking future employment). So you can't participate in any particular matter that will have a direct and predictable effect on your financial interest.

The important point to remember here is that 18 U.S.C. §208(a) is a criminal statute. A knowing violation of this statute can result in criminal prosecution and penalties. It's important to understand the elements of the financial conflict of interest statute. You have to participate "personally and substantially" in a "particular matter" in order for there to be a conflict of interest, and there has to be a "direct and predictable" effect on your financial interests.

What is a particular matter?

A "particular matter" involves any deliberation, decision or action and that is focused on the interests of specific persons/organizations or any identifiable class of persons. It includes "specific party" matters (e.g., contracts, grants, assistance agreements, lawsuits, enforcement action, permits, licenses, audits) and matters of "general applicability" (e.g., rulemaking or policy matters) that distinctively affect a particular industry or identifiable class of persons.

What is "personal and substantial" participation?

Personal participation means that you were personally involved in the matter or that you directed or controlled a subordinate's participation. *Substantial participation* means that your involvement in the matter was of significance, which includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing.

What is a "direct and predictable" effect on a financial interest?

The effect must be direct and predictable and not speculative (though the actual dollar amount does not need to be ascertained). There must be close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest.

Regulatory Exemption Levels

There are different regulatory exemption levels, depending on the type of particular matter. See 5 C.F.R. § 2640.202. You can still participate if you own less than the levels below:

| SPECIFIC PARTY MATTER e.g., an enforcement action against ABC Widget Company | MATTER OF GENERAL APPLICABILITY e.g., working on a rulemaking that affects all widget manufacturers |
|---|---|
| ≤\$15,000 in ABC Widget Co. itself or in aggregate among all widget manufacturers ≤\$25,000 aggregate for any affected non-parties (e.g., DEF Widget Corp. which manufactures a similar product) | ≤\$25,000 aggregate in any one widget maker (e.g., ABC Widget Corp. or DEF Widget Corp.) ≤\$50,000 aggregate in all affected parties (all widget makers) |

Don't forget that you have to add together your own ownership interest and any imputed interest. You also have to aggregate how many assets you own in the same sector.

EXAMPLE: You own \$8,000 worth of ABC Widget and your spouse also owns \$8,000. You cannot direct your staff to participate in an event at ABC Widget offices because you own more than \$15,000 in the company and cannot participate in any particular matter that involves or affects ABC Widget as a specific party.

EXAMPLE: Your father-in-law passed away recently and bequeathed to your spouse shares in an oil and gas company worth \$30,000. You can't work on a specific party matter involving that company and also now can't work on any rulemaking that affects all oil and gas companies.

What to do if you're worried about a conflict

If you are concerned that you have a conflict, contact OGC/Ethics immediately. We will go over the available options for you. Typically, potential conflict of interests are resolved in one of the following ways:

1) Don't participate. This means that you do not participate in the matter at all, including attending meetings, receiving briefings or being copied on substantive documents. We recommend that you document your recusal in writing, with a copy to OGC/Ethics.

2) Divest entirely or get below the regulatory threshold. You can either sell outright on your own or, if the sale will result in a tax liability for capital gains, then you may instead contact OGC/Ethics for a "Certificate of Divestiture" before you sell. This will enable you to defer capital gains tax, but you have to ask OGC/Ethics for assistance before you divest.

3) Ask for a waiver. Only the Agency's Designated Agency Ethics Official (DAEO) in OGC is authorized to waive the prohibition of 18 U.S.C. §208(a) where the interest is "not so substantial as to be deemed likely to affect the integrity of services which the Government may expect." OGC must consult with another federal agency before issuing a waiver, which are rarely granted.

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From: [Griffo, Shannon](#)
To: [Nunez, Alejandra](#)
Subject: RE: Follow-up from OGC/Ethics - outside activity approvals
Date: Tuesday, March 09, 2021 11:43:00 AM

Hi Ale,

One follow-up to this email exchange – I just heard from Justina that Dan Utech will be considered the “supervisor” for purposes of outside activity approvals for political appointees. This means that you don’t need to include Joe on your outside activity request. Instead, send the request directly to Justina (if you haven’t already done so) and then she will coordinate with Dan.

Thanks,

Shannon

Shannon Griffo

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U.S. Environmental Protection Agency

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Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Sent: Tuesday, February 23, 2021 5:11 PM

To: Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: RE: Follow-up from OGC/Ethics - outside activity approvals

Thank you very much for your guidance, Shannon.

I will mention this matter to Joe and send a message addressing all the points below to Justina by the end of the week.

Much appreciated!

Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>

Sent: Tuesday, February 23, 2021 4:36 PM

To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Subject: Follow-up from OGC/Ethics - outside activity approvals

Hi Ale,

As promised, here are the instructions on how to submit a request for outside activity approval related to your Volunteer Board position with the Clean Energy Credit Union. Pursuant to EPA’s supplemental ethics regulations found at 5 C.F.R. § 6401.103, you should send an email to Justina Fugh, and cc your immediate supervisor. Justina, as Deputy Ethics Official, will provide the actual determination but she’ll want to see that Joe is aware. Your note should address the following:

- name, title and grade;
- the nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;
- the name and business of the person or organization for which the work will be done;
- the estimated time to be devoted to the activity;
- whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
- a statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

- the basis for compensation (e.g., fee, per diem, per annum, etc.)
- a statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 ([Subpart H on “Outside Activities”](#)) and 5 C.F.R. § 6401.103 ([EPA’s Supplemental Regulations](#)); and
- an identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

I also wanted to make sure you had the ethics regulation related to fundraising that we previously discussed. Pursuant to 5 C.F.R. § 2635.808(c), you can never *personally solicit* any funds from a subordinate or any person known to you to be a prohibited source of the Agency’s (meaning any person who is doing business with the Agency, seeks to do business with the Agency or is regulated by the Agency). You may also never use or allow the use of your EPA position, title or affiliation in connection with fundraising for your outside activities. In your request for approval, you can note in the description of services that you will not be doing any fundraising for the Credit Union.

Thanks!

Shannon

Shannon Griffo

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Griffo.Shannon@epa.gov

From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: Follow-up from OGC/Ethics
Date: Tuesday, February 16, 2021 3:25:36 PM

Thank you, Shannon! Tomorrow at 3 PM ET would be great. I'll call you. Much appreciated!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, February 16, 2021 3:11 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up from OGC/Ethics

Hi Ale,

Today flew by! I have availability tomorrow between 3-4:30. I'll be out on Friday, so let me know if a time tomorrow afternoon still works for you.

Thanks,

Shannon

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From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Tuesday, February 16, 2021 11:58 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up from OGC/Ethics

Hi Shannon,

I hope you had a good weekend. Thank you very much for your message. I really appreciate your guidance!

I wanted to follow-up on the last item and ask a couple more questions when your schedule allows. I am free today between 12:30 and 1:30 PM ET or tomorrow anytime after 3 PM ET. Please let me know if there is a time that works for you (if not, I will propose times for Friday).

Thank you so much again.

Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, February 11, 2021 11:44 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: Follow-up from OGC/Ethics

Hi Ale,

First, I just wanted to say how much we appreciate your questions and mindfulness of your ethics obligations. We are always available and more than happy to provide you with guidance! And as promised, I'm following up on a few things we previously discussed related to your recusals:

BAR RESTRICTIONS: You are bound by your bar restrictions from sharing the confidences of your former client, the Sierra Club, and from switching sides in litigation in which you previously participated or for which you provided supervision or counsel. I have the list you provided of cases (thanks!), which will be incorporated into your recusal statement.

ETHICS PLEDGE RESTRICTIONS: Pursuant to Paragraph 2 of the Biden Ethics Pledge, you cannot

participate in any specific party matter in which your former employers, the Sierra Club or Coalition for Green Capital, is a party or represents a party for two years. You also cannot attend any meeting nor have any communication with your former employers unless the communication relates to a particular matter of general applicability and participation in the event is “open to all interested parties.” This recusal period on any specific party matter (e.g., litigation, contract, grants, speaking engagement) lasts until after January 31, 2023.

Now one of the things we talked about was how there is a difference between litigation about a rulemaking (which is a specific party matter), and later, the Agency taking up work on the rulemaking itself (which is a matter of general applicability). So long as you don’t work on the litigation itself from which you are recused, and don’t share client secrets, then you can work on the rulemaking going forward. This includes any new rules related to revising vehicle fuel economy and emission standards.

RECUSAL STATEMENT: Until we get your public financial disclosure report, we can’t finalize your recusal statement. However, I wanted to give you a heads up that OGC/Ethics is working with Eunjung to put together a thumbnail sketch of all the OAR appointees’ recusals.

During our last call, you mentioned that other cases which you previously worked on were arising during meetings with other federal agencies and you were recusing yourself accordingly. Normally our recusal statements are inward facing for EPA and includes those matters that are pending or may arise before EPA, but would it be helpful to make yours inward and outward facing? Thinking about this more, I realized that these cases are arising *in the course of your EPA work*. Although we haven’t encountered this before, we could list those other cases in your recusal statement if it’s helpful to share with other feds to make sure you’re not involved. If you’d like to do that, just send me those additional case names.

OUTSIDE ACTIVITY: I spoke with Justina, and have updates regarding our last discussion on your questions regarding outside activity/employment. This will probably be easier to talk through over the phone. So just let me know when you have availability for a quick chat.

Thanks!

Shannon

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U.S. Environmental Protection Agency

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Griffo.Shannon@epa.gov

From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: Follow-up on Ethics
Date: Thursday, February 04, 2021 3:31:10 PM

Great! I will call you right now. Much appreciated.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, February 4, 2021 3:27 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on Ethics

Anytime. You can give me a ring at 202-564-7061 or call me on Teams when you're ready to chat.

Shannon Griffo

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U.S. Environmental Protection Agency

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Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, February 04, 2021 3:25 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on Ethics

Thank you, Shannon! I am also free until 4:30 PM ET! What time would be best for you?

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, February 4, 2021 3:10 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on Ethics

I already had a draft email started for you and was going to send it right after my next meeting ended! We just finished and I'm around today until 4:30ish if you have availability. I'm out tomorrow, but back in Monday. If something is time sensitive and you need a response while I'm out, I can make sure you touch base with someone tomorrow (if we don't chat this afternoon).

Thanks,

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, February 04, 2021 2:46 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Follow-up on Ethics

Hi Shannon,

Thanks so much again (and to Ferne and Victoria, too!) for your guidance this afternoon. The training was really helpful.

In advance, forgive me for following-up so quickly. I was wondering if you have a few minutes to talk at your earliest convenience. I would like to make sure I am applying the guidance received today

correctly before I begin working on certain matters.

I look forward to working with you!

Much appreciated.

Ale

From: [Griffo, Shannon](#)
To: [Nunez, Alejandra](#)
Subject: RE: Follow-up on your 278
Date: Tuesday, April 20, 2021 8:56:00 AM

This is perfect. Thanks!

Shannon Griffo
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Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, April 19, 2021 3:13 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

Hi Shannon,
Please see a suggested job description below. Let me know if you have any questions.
Thank you again for all your guidance.
Ale

The Deputy Assistant Administrator (DAA) for Mobile Sources, together with the DAA for Stationary Sources, the DAA for Air and Radiation, the Principal Deputy Assistant Administrator, and the Assistant Administrator, is responsible for managing and supervising the EPA's Office of Air and Radiation. The DAA for Mobile Sources is mainly focused on coordinating policy, regulations, and communications for transportation-related issues, including emission standards and voluntary programs to reduce pollution from vehicles, and making recommendations on the appropriate course of action to the Principal Deputy Assistant Administrator and Assistant Administrator. The DAA for Mobile Sources also oversees other areas in the Office of Air and Radiation, including environmental justice, indoor air quality, and voluntary partnerships.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, April 19, 2021 10:56 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Any of those afternoon times will work for me. Just let me what time and I'll make sure I'm available. Thanks!

Shannon Griffo
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(202) 564-7061

Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, April 19, 2021 9:08 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

Good morning, Shannon,
I actually meant to ask if you have a few minutes to talk before I send you the job description. (Last week was so busy – apologies).
I am free 10-10:30 AM, 12-1 PM, 1:30-2 PM or 3-3:30 PM ET. Let me know and thank you so much!
Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, April 19, 2021 9:03 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Hi Ale,

Just checking to see if you had a few minutes to send me your job duties so I can add it into the CD request? If it's easier, you can send me your position description and I'll parse it down.

Thanks!
Shannon

Shannon Griffo
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Griffo.Shannon@epa.gov

From: Griffo, Shannon
Sent: Wednesday, April 14, 2021 2:16 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Hi Ale,

It looks like Justina answered your questions, but if not, just let me know!

In the meantime, can you please send me a few sentences that describes your DAA position/job duties? I'm finishing up your CD request that I'm going to have Justina review, and I want to make sure I've got a good position description in there. I'll also follow-up with any other questions we may

have.

Thanks!
Shannon

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Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, April 08, 2021 2:41 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

Thank you, Shannon. Early next week is perfect. I'll follow up with you on Monday to find a time that works.
Much appreciated!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, April 8, 2021 2:40 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Hi Ale,

Thanks for sending this. I'll be traveling back to DC tomorrow and will return to my normal work schedule next week. I plan on working on the CD package Monday. I've got meetings for most of this afternoon and then out tomorrow. Can we chat early next week or did you need to talk sooner?

Thanks,
Shannon

Shannon Griffo
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(202) 564-7061
Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Tuesday, April 06, 2021 12:55 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: RE: Follow-up on your 278

Hi Shannon,

Thank you so much for sharing this information. I have filled out the table at the bottom of page 1 in the attached document.

Regarding your question, yes, it is fine to divest the entirety of the asset.

Please let me know if you have any other questions, and if you have a few minutes to check-in this week.

Many thanks!

Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>

Sent: Friday, March 26, 2021 1:54 PM

To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Subject: Follow-up on your 278

Hi Ale,

I spoke with Justina and she agreed that we could move forward with completing the CD request paperwork for your (b) (6). As we discussed, we do not see any need for you to recuse at this point given there is no current direct and predictable effect on the financial interest. (b) (5)

I will use the attached form to request the CD. You will need to provide specific information about the number of shares your spouse owns of the asset. See the table at the bottom of page 1 in the attached CD request form. You can send that information to me or complete the table yourself. I'll do the rest of the form. Please note that, when requesting a CD, OGE will nearly always require you to divest of the entirety of the asset, not just enough to get below the regulatory threshold. I believe you indicated this would be okay, but I wanted to highlight that. If a CD is issued, you will then have 60 days to purchase something else, and you will have to file periodic transaction reports.

I've reviewed your 278, and I'm close to certifying it. Just let me know about your outside activity and whether I should amend the end date. In the meantime, I've attached a cautionary note which summarizes what we've previously discussed related to your financial conflicts of interest. I'll also put something similar to the chart below into your recusal statement – I need to take a closer look to make the sure I've identified all the appropriate sectors. So if you are issued a CD and divest of (b) (6), then that asset won't be identified in the recusal statement. However, if a CD is not issued, then I'll craft language in the recusal statement to reflect that we don't currently see a conflict.

I'll be out of the office next week, but I'll check emails periodically. Feel free to reach out if you need anything. You can also contact Ferne Mosley or Justina Fugh (or email ethics@epa.gov) if you have a time-sensitive question. And once I'm back, I'll start working on your recusal statement.

Thanks!
Shannon

RECUSAL OBLIGATIONS – FINANCIAL CONFLICTS OF INTEREST

You cannot participate personally and substantially in any particular matter that would have a direct and predictable effect on the following:

| RECUSAL LIST – SPECIFIC PARTY MATTERS | |
|---------------------------------------|---------------------------|
| Amazon | Peloton Interactive |
| (b) (6) | QUALCOMM |
| Kering | SunRun |
| Microsoft | Uber Technologies |
| Netflix | Zoom Video Communications |

You cannot participate personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below):

| RECUSAL LIST – INDIVIDUAL SECTORS | |
|--|--------------------------------------|
| E-commerce (internet retail) | Luxury goods |
| Technology (semiconductors) | Consumer products (exercise/leisure) |
| Technology (software – infrastructure or application) | (b) (6) |
| Communication services (entertainment or telecom services) | Residential solar panels |

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Griffo.Shannon@epa.gov

From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: Follow-up on your 278
Date: Monday, April 19, 2021 11:57:06 AM

Thank you very much, Shannon. I'll call you at 1:30 PM ET. Much appreciated.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, April 19, 2021 10:56 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Any of those afternoon times will work for me. Just let me what time and I'll make sure I'm available. Thanks!

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From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, April 19, 2021 9:08 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

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Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, April 19, 2021 9:03 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Hi Ale,

Just checking to see if you had a few minutes to send me your job duties so I can add it into the CD request? If it's easier, you can send me your position description and I'll parse it down.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Griffo, Shannon
Sent: Wednesday, April 14, 2021 2:16 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Hi Ale,

It looks like Justina answered your questions, but if not, just let me know!

In the meantime, can you please send me a few sentences that describes your DAA position/job duties? I'm finishing up your CD request that I'm going to have Justina review, and I want to make sure I've got a good position description in there. I'll also follow-up with any other questions we may have.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, April 08, 2021 2:41 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

Thank you, Shannon. Early next week is perfect. I'll follow up with you on Monday to find a time that works.
Much appreciated!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, April 8, 2021 2:40 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Follow-up on your 278

Hi Ale,

Thanks for sending this. I'll be traveling back to DC tomorrow and will return to my normal work schedule next week. I plan on working on the CD package Monday. I've got meetings for most of this afternoon and then out tomorrow. Can we chat early next week or did you need to talk sooner?

Thanks,
Shannon

Shannon Griffo
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U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Tuesday, April 06, 2021 12:55 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

Hi Shannon,
Thank you so much for sharing this information. I have filled out the table at the bottom of page 1 in the attached document.
Regarding your question, yes, it is fine to divest the entirety of the asset.
Please let me know if you have any other questions, and if you have a few minutes to check-in this week.
Many thanks!
Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, March 26, 2021 1:54 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: Follow-up on your 278

Hi Ale,

I spoke with Justina and she agreed that we could move forward with completing the CD request paperwork for (b) (6). As we discussed, we do not see any need for you to recuse at this point given there is no current direct and predictable effect on the financial interest. (b) (5)

I will use the attached form to request the CD. You will need to provide specific information about the number of shares your spouse owns of the asset. See the table at the bottom of page 1 in the attached CD request form. You can send that information to me or complete the table yourself. I'll

do the rest of the form. Please note that, when requesting a CD, OGE will nearly always require you to divest of the entirety of the asset, not just enough to get below the regulatory threshold. I believe you indicated this would be okay, but I wanted to highlight that. If a CD is issued, you will then have 60 days to purchase something else, and you will have to file periodic transaction reports.

I've reviewed your 278, and I'm close to certifying it. Just let me know about your outside activity and whether I should amend the end date. In the meantime, I've attached a cautionary note which summarizes what we've previously discussed related to your financial conflicts of interest. I'll also put something similar to the chart below into your recusal statement – I need to take a closer look to make the sure I've identified all the appropriate sectors. So if you are issued a CD and divest of (b) (6), then that asset won't be identified in the recusal statement. However, if a CD is not issued, then I'll craft language in the recusal statement to reflect that we don't currently see a conflict.

I'll be out of the office next week, but I'll check emails periodically. Feel free to reach out if you need anything. You can also contact Ferne Mosley or Justina Fugh (or email ethics@epa.gov) if you have a time-sensitive question. And once I'm back, I'll start working on your recusal statement.

Thanks!
Shannon

RECUSAL OBLIGATIONS – FINANCIAL CONFLICTS OF INTEREST

You cannot participate personally and substantially in any particular matter that would have a direct and predictable effect on the following:

| RECUSAL LIST – SPECIFIC PARTY MATTERS | |
|---------------------------------------|---------------------------|
| Amazon | Peloton Interactive |
| (b) (6) | QUALCOMM |
| Kering | SunRun |
| Microsoft | Uber Technologies |
| Netflix | Zoom Video Communications |

You cannot participate personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below):

| RECUSAL LIST – INDIVIDUAL SECTORS | |
|---|--------------------------------------|
| E-commerce (internet retail) | Luxury goods |
| Technology (semiconductors) | Consumer products (exercise/leisure) |
| Technology (software – infrastructure or application) | (b) (6) |
| Communication services (entertainment or | Residential solar panels |

| | |
|-------------------|--|
| telecom services) | |
|-------------------|--|

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: [Griffo, Shannon](#)
To: [Nunez, Alejandra](#)
Subject: RE: Follow-up on your Public Financial Disclosure Report
Date: Thursday, March 11, 2021 8:33:00 AM

I also have availability tomorrow between 12-1. Feel free to give me a call then. Or let me know if you prefer that I send you a scheduler. Thanks!

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Sent: Wednesday, March 10, 2021 5:05 PM

To: Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: RE: Follow-up on your Public Financial Disclosure Report

Thank you very much, Shannon. Yes, of course!

I am free on Friday between 12-1 PM ET or anytime after 3 PM ET. Please let me know if there is a time that works for you in this window; otherwise I will propose times for Monday.

Many thanks again.

Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>

Sent: Wednesday, March 10, 2021 4:29 PM

To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Subject: Follow-up on your Public Financial Disclosure Report

Hi Ale,

Do you have a few minutes to chat about your public financial disclosure report? Before I send your report back to you in Integrity, I wanted to touch base to discuss a few things. Please let me know when you have availability over the next few days.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: Invitation from the Clean Vehicles Coalition
Date: Monday, March 01, 2021 6:32:22 PM

Thank you very much, Shannon. I believe it would be 1 attendee per organization, but let me confirm. I will ask Ann for the attendee list and I will get back to you.

Much appreciated!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, March 1, 2021 6:20 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Invitation from the Clean Vehicles Coalition

Hi Ale,

The subject of the meeting appears to be a matter of general applicability (rule or policy), and I'd say there is a diversity of interests among the organizations. They all have their own distinct missions and diverse perspectives on the topics on which they are aligned. So the only thing I'd want to know is how many representatives will be present from Sierra Club at this meeting. The Office of Government Ethics gives that 4 + 1 example, which is what Joe alludes to below. But when we are looking at that, we want to ensure that there are at least four other parties present in addition to your former employer. There should be +4 for each individual representing your former employer. We'd have concerns if there are numerous Sierra Club individuals present at the advisory committee meeting, but only 1 from each of the other 7 organizations. This doesn't represent the "multiplicity of parties" that OGE describes in its guidance.

Have Ann ask for an attendee list, and then check how many number of attendees there will be per organization to confirm the ratio of overall attendees to Sierra Club participants is 4:1. I'm using this just as an example, but if there is one representative from each organization, then I'd conclude that this meeting meets the exception found within the Ethics Pledge and you could attend.

Thanks,

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, March 01, 2021 3:43 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: FW: Invitation from the Clean Vehicles Coalition

Good afternoon, Shannon,

As discussed earlier, here is the email thread regarding a request for Joe to join one of the weekly meetings of the Advisory Committee of the Clean Vehicles Coalition, which is set to take place tomorrow. The advisory committee is comprised of eight organizations, which include Sierra Club. Joe had wanted me to cover the meeting instead of him. (We all have a conflict tomorrow though, so I think we would have to reschedule this). Please let me know if it would be appropriate for me to attend this meeting.

As an aside, I had proposed for EPA to instead organize a regular stakeholder meeting and invite these organizations to attend, instead of Joe (or someone else) joining one of their “work” meetings. The Clean Vehicles Coalition is a large network of advocacy groups, and organizing a larger meeting would also be more inclusive of their membership.

I appreciate your thoughts on this.

Many thanks.

Ale

From: Goffman, Joseph <Goffman.Joseph@epa.gov>

Sent: Friday, February 26, 2021 9:02 AM

To: Campbell, Ann <Campbell.Ann@epa.gov>

Cc: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Subject: RE: Invitation from the Clean Vehicles Coalition

(b) (5) . Thanks.

Joseph Goffman

Acting Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency

From: Campbell, Ann <Campbell.Ann@epa.gov>

Sent: Friday, February 26, 2021 9:01 AM

To: Goffman, Joseph <Goffman.Joseph@epa.gov>

Cc: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Subject: Re: Invitation from the Clean Vehicles Coalition

Will look through the email trail and check in with ethics - unless you already have Ale or wish to yourself. Whatever we do it would be best to have an official opinion.

Ann (Campbell) Ferrio

Chief of Staff

Office of Air and Radiation

(202) 566-1370

On Feb 26, 2021, at 8:56 AM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Thanks, Ale. Isn't it the case under the rules you can meet with a group of more than 5(?) entities even if SC is one of the group? Ann – please make a quick touch on this.

Thanks.

Joseph Goffman

Acting Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Sent: Friday, February 26, 2021 8:53 AM

To: Goffman, Joseph <Goffman.Joseph@epa.gov>

Subject: RE: Invitation from the Clean Vehicles Coalition

I think it would be fine, but I will have to recuse myself as my former employer is a

member of this coalition.

Why don't we invite them to a regular EPA meeting instead? I will still have to recuse myself, but perhaps the coalition can bring other members as well (beyond their advisory committee) and they could also meet with career staff.

From: Goffman, Joseph <Goffman.Joseph@epa.gov>

Sent: Thursday, February 25, 2021 10:48 PM

To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Subject: FW: Invitation from the Clean Vehicles Coalition

(b) (5)

Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Danielle Gagne <dgagne@partnershipproject.org>

Sent: Thursday, February 25, 2021 11:59 AM

To: David Friedman <david.friedman@consumer.org>

Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>

Subject: Re: Invitation from the Clean Vehicles Coalition

Thanks, David!

Joe, happy to help facilitate a time that works best for you.

On Thu, Feb 25, 2021 at 10:57 AM David Friedman <david.friedman@consumer.org> wrote:

Hi and thank you Joe. It will be great to catch up.

I'm looping in the most excellent person helping us run the coalition, Danielle Gagne, to also help facilitate the connection and timing.

We'd love to invite you to our next advisory committee meeting, which is Tuesday at 2pm. And if that does not work, just let us know and we can be as flexible as possible.

Sincerely,

David

On Thu, Feb 25, 2021 at 7:55 AM Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Hi, David and Dan. Great to connect. We will set something up. Thanks.

Sent from my iPhone

On Feb 25, 2021, at 7:51 AM, Utech, Dan <Utech.Dan@epa.gov> wrote:

Hi David – Thanks for your email. I'm cc'ing Joe, as I think that meeting with him and his team would be the best next step. Best,
Dan

From: David Friedman <david.friedman@consumer.org>

Sent: Wednesday, February 24, 2021 7:13 PM

To: Utech, Dan <Utech.Dan@epa.gov>

Subject: Re: Invitation from the Clean Vehicles Coalition

Hi Dan,

Our coalition just had a great call with Ali and Austin. As part of it he encouraged us to connect with EPA and the other agencies, so I wanted to take this chance to reach back out to see if we might set up a time for you to engage with us.

I am sure you are totally slammed, but it would be great for us to connect with you, and perhaps Joe, as it sounds like conversations with stakeholders and momentum are building up.

Also, so you know, multiple members of the coalition are sending a letter tomorrow to POTUS laying out support for moving forward on strong standards. While CR is not on that letter, we are supportive of many of the positions. So, walking through folks thinking on that and related issues could also be on the table for a good conversation.

Hope you are safe and well.

Sincerely,

David

On Fri, Feb 12, 2021 at 12:27 PM David Friedman

<david.friedman@consumer.org> wrote:

Hi Dan,

Congratulations again on your role and on Administrator-nominee Regan's successful committee vote. I hope you are settling in well and are drinking from only 5-6 fire hoses at once.

I represent Consumer Reports on the Clean Vehicles Coalition, which consists of leaders from health, environmental justice, equity, investor-linked, environmental and consumer groups. I wanted to invite you to join an upcoming meeting of our advisory committee for a brief conversation. It would be great for everyone to learn about your efforts at EPA and talk about the clean car standards. Would you be open to meeting with our group, perhaps next week?

This advisory committee consists of the American Lung Association, GreenforAll, Ceres, Union of Concerned Scientists, Environmental Defense Fund, NRDC, Sierra Club, and Consumer Reports.

I look forward to the chance to reconnect, at least virtually!

Hoping you are safe and well.

Sincerely,

David

--

David Friedman

Vice President, Advocacy o (202) 462-6262 ext 7426

CR.org CR.org/advocacy

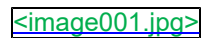


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David Friedman

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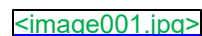
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David Friedman

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From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: More Follow-up from OGC/Ethics
Date: Tuesday, February 23, 2021 3:02:54 PM

Thanks so much, Shannon. I'll call you at 4 PM ET. Much appreciated!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, February 23, 2021 3:02 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: More Follow-up from OGC/Ethics

Hi Ale,

I'm available between 4-4:30 today, and also free tomorrow between 12-1. Just let me know when to expect your call.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Tuesday, February 23, 2021 1:08 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: More Follow-up from OGC/Ethics

Hi Shannon,

Thank you so much for all the clarifications. This is really helpful.

I wanted to ask if you have a few minutes to discuss two quick questions regarding outside activity and the financial disclosure form (which I plan to submit later today).

Would you have a few minutes to talk later today? I am free at 4-5:30 PM ET. Or tomorrow, I could talk at 12-1 PM ET.

Many thanks again for all your guidance.

Much appreciated!

Ale

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, February 19, 2021 3:02 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: More Follow-up from OGC/Ethics

Hi Ale,

As promised, I'm following up on our discussion from earlier this week related to your rulemaking question. I spoke with Justina and she agrees with the advice I gave you. We would consider the Petition for Reconsideration filed by the NGOs, including your former employer, to be a specific party matter that you should not work on – meaning you should not participate in any Agency decision or discussion about how to respond to that *specific Petition/letter*. Even though the Federal Register notice mentions that EPA's action (a matter of general applicability) is taken in response to the Petition for Reconsideration filed by the NGOs (including Sierra Club), that's just a statement of

fact. So you cannot participate personally and substantially in the Petition for Reconsideration, but you can still work on the rulemaking itself.

I'll also send you a separate email with those instructions on how to request approval for an outside activity.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: OGC/Ethics follow-up on 18 U.S.C. § 205
Date: Wednesday, March 24, 2021 9:34:16 AM

Thank you very much, Shannon. I am free at 3:30 PM ET. I'll call you then.
Much appreciated!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Wednesday, March 24, 2021 9:30 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: OGC/Ethics follow-up on 18 U.S.C. § 205

Hi Ale,

Apologies for the delay. My schedule is a little off this week and I ended up being out Monday and Tuesday. I can do this afternoon at 3:30ET if you are still available. I'll also have availability tomorrow and Friday, but I'll be out all next week.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, March 22, 2021 10:54 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: OGC/Ethics follow-up on 18 U.S.C. § 205

Hi Shannon,

Thank you so much for your guidance. I wanted to follow-up on this and other questions we discussed when we last talked.

Would you have time to talk in the next couple of days? If so, here's my availability:

Tuesday: 10-11 AM or after 4:30 PM ET

Wednesday: 10 AM-12 PM or 3:30-4 PM ET

Many thanks!

Ale

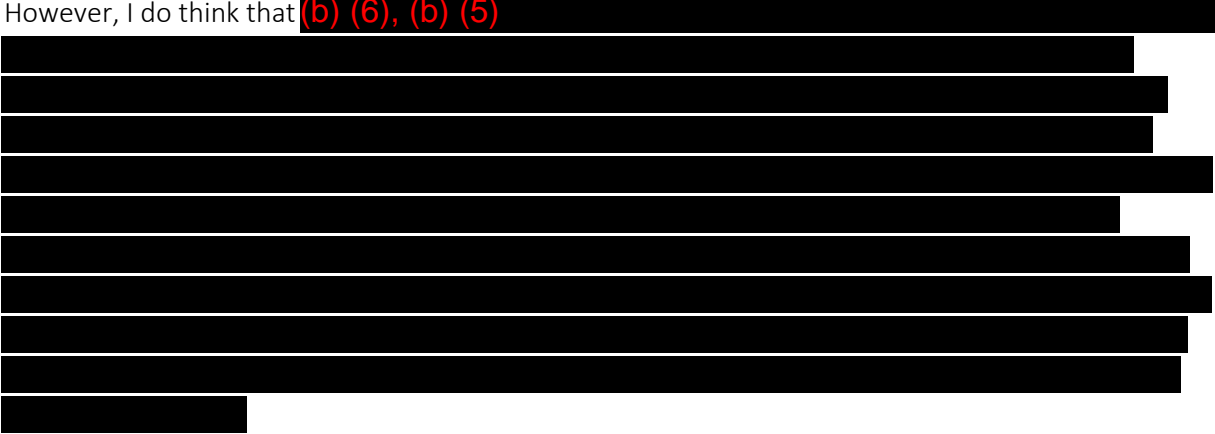
From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, March 18, 2021 4:10 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: OGC/Ethics follow-up on 18 U.S.C. § 205

Hi Ale,

I did some thinking and talked to the team about your outside activity question related to the representational restrictions found at 18 U.S.C. § 205(a)(2). Generally speaking, federal employees are prohibited from acting as an agent or attorney, with or without compensation, before the executive and judicial branches in particular matters in which the United States is a party or has a direct and substantial interest. In order to act as an agent or attorney, a person has to have actual or apparent authority; make a direct communication; and have *an intent to influence*. Note that

requesting factual information or responding to requests from the Government for factual information does not violate 205(a)(2). Also a submission of application or forms, even if the employee is making such a communication on behalf of another person, is not a violation if the submission consists of factual information and seeks routine action involving either no or minimal discretion. These sorts of communications do not contain an appreciable element of dispute and, in turn, no intent to influence.

However, I do think that (b) (6), (b) (5)



Happy to chat more about this or answer any other questions you may have.

Thanks!

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: [Nunez, Alejandra](#)
To: [Griffo, Shannon](#)
Subject: RE: Recusal list
Date: Monday, February 08, 2021 12:14:18 PM

Apologies – let's do 2 PM ET instead. I will call you then. Many thanks.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, February 8, 2021 11:14 AM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Recusal list

Hi Ale,

Thanks for the list! I'm also available to chat anytime between 1-3. Just let me know what time is best for you and you can reach me at 202-564-7061.

Thanks,

Shannon

Shannon Griffo

Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency

(202) 564-7061

Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, February 08, 2021 9:06 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Recusal list

Hi Shannon,

I hope you had a good weekend!

I wanted to follow-up on our discussion. I have prepared a recusal list. See attached. This list includes cases in which I have been involved personally and substantially, as well as cases where my employer is a party (the list is not exhaustive from the latter perspective). I have a few questions about the list and other issues discussed during the Ethics training.

Would you have time to talk today? If so, I am free between 12 PM and 3 PM ET.

Many thanks.

Ale

From: [Fugh, Justina](#)
To: [Diaz, Catherine](#); [Efron, Brent](#); [Engelman-Lado, Marianne](#); freyc.christopher@epa.gov; [Goldberg, Ruby](#); [Kim, Eun](#); [Levy, Maxwell](#); [Nunez, Alejandra](#); [O'Brien, Grant](#); [Sabater, Juan](#); [Waterhouse, Carlton](#); [Michalos, Maria](#); [Conger, Nicholas](#)
Subject: Welcome to the wonderful world of public financial disclosure reporting!
Date: Tuesday, February 02, 2021 7:58:00 PM
Attachments: [Advisory - 278 and 278T reporting obligations January 2021 digitally signed.pdf](#)
[reporting periods for 278s.docx](#)
[When to Report Transactions on the OGE 278 and Part 7 - November 2020.docx](#)

Hi there,

Welcome to EPA! My name is Justina Fugh, and I'm the director of the EPA Ethics Office. For your initial ethics training on Thursday, February 4 at noon, we'll go over your ethics obligations, which includes submitting the public financial disclosure report. Yes, in your position, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure Report. Using your EPA email address (or for Catie and Eunjung, your personal email addresses), I have now assigned you a new entrant report that my staff will review. Having this information will allow us to assess your conflicts issues and then to draft recusal statements for those of you who need them. Don't worry ... we're here to help you.

DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from your start date at EPA or 3/2/21. If you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (www.INTEGRITY.gov) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns. We have pre-populated the address field with EPA's address because, well, this is a public form and we don't want anyone to know your personal address. We have entered your filer category as Schedule C (even if that might change later) and your filer status as "full time." For help in INTEGRITY, check out the OGE [Public Financial Disclosure Guide](#). The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you didn't receive your account notification, then check your clutter box for messages from INTEGRITY.gov, or contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of \$200 for not filing your report timely.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other

forms of securities when the amount of the transaction exceeds \$1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I've also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined \$200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than \$1000. Include any income from any source that exceeded \$200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than \$5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
- If you have nothing to report in a section, be sure to click the "nothing to report" button
- The various parts of the form have different reporting periods, so please consult the attached "reporting periods" chart. Remember to check out the Office of Government Ethics' [Public Financial Disclosure Guide](#) or to contact OGC/Ethics for help.

If you have any questions regarding this message or your obligations, then please contact me or anyone in the OGC Ethics Office at ethics@epa.gov. Good luck with the form and remember, we can answer any questions you may have.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh **Justina Fugh** Digitally signed by Justina Fugh
Date: 2021.01.22 12:07:49
-05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)¹ and Periodic Transaction Reports (OGE 278-Ts).² **Filing a late report will result in a \$200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.³ **Unpaid late fees are subject to the Agency's⁴ and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

¹ See 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.

² Pub. L. 112-105 § 11 (STOCK Act).

³ See 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).

⁴ See Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|--|---|
| OGE 278e - New Entrant reports | Within 30 days of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | No later than May 15 |
| OGE 278e – Termination reports | No later than 30 days after leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports ⁵ | The <i>earlier of</i> 30 days after learning of a transaction or 45 days of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date**. Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. See 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not “extraordinary” circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is \$56,216.⁶

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

⁵ See attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T*.

⁶ In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of \$15,000 and still had to file the termination report.

When to Report Transactions

FILING DEADLINE : 30 days from notification or 45 days from transaction *whichever is earlier*

A \$200 late filing fee penalty is assessed for each late periodic reporting period¹

| | Periodic Transaction Report | Annual and/or Termination Report |
|--|-----------------------------|-----------------------------------|
| Investment Assets | Report on the OGE 278-T? | Report on Part 7 of the OGE 278e? |
| Transactions of \$1,000 or less | | |
| • Any asset in which the transaction amount is \$1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Investment assets held by you, your spouse, or jointly held | | |
| • Stocks or stock options | Yes | Yes |
| • Corporate or municipal bonds (exclude U.S. Treasury securities) | Yes | Yes |
| • Commodity futures | Yes | Yes |
| • Other investment securities | Yes | Yes |
| • Assets listed above in your individual, joint, or spousal brokerage accounts managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Stocks | Yes | Yes |
| • Corporate or municipal bonds (exclude U.S. Treasury securities) | Yes | Yes |
| • commodity futures | Yes | Yes |
| • other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> or UGMA brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes ² |
| • Mutual funds, exchange traded funds, 529 plans, index funds, and/or other "excepted investment funds" ³ | No | Yes |
| • Any asset in which the transaction amount is \$1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) or certificates of deposit | No | No |
| • Money market accounts and mutual funds | No | No |
| • US Treasury securities (e.g., T bills, Treasury bonds, savings bonds) | No | No |
| • Federal government retirement accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust ⁴ | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

Last updated November 2020

¹ This late fee is automatically imposed by law and is non-negotiable. You may request a waiver of any late filing fee from the Designated Agency Ethics Official or the Alternate DAEO if there are extraordinary circumstances. A fee waiver is at the sole discretion of the DAEO/ADAEO and is not subject to appeal. A filer who has unpaid late fees will be referred to the appropriate federal office or agency for debt collection procedures.

² Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

³ To be an excepted investment fund (EIF), the asset must be:

- (a) widely held (more than 100 participants),
- (b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
- (c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

⁴ OGC/Ethics must determine that your trust qualifies as an “excepted trust.” For help, email ethics@epa.gov.

The reporting periods for the OGE Form 278e vary depending on the type of report being filed.

| Part | Report Information for the Following Period... | | | |
|--|--|--|--|--------------------------------------|
| | Nominee, New Entrant, and Candidate | Annual | Termination | Annual / Termination |
| 1. Filer's Positions Held Outside United States Government | Preceding Two Calendar Years to Filing Date | Preceding Calendar Year to Filing Date | Current Calendar Year to Term Date (in addition, the preceding calendar year if an Annual report for that year is required but has not yet been filed) | Preceding Calendar Year to Term Date |
| 2. Filer's Employment Assets & Income and Retirement Accounts | Preceding Calendar Year to Filing Date ¹ | Preceding Calendar Year | Same as Part 1 | Same as Part 1 |
| 3. Filer's Employment Agreements and Arrangements | As of Filing Date | Preceding Calendar Year to Filing Date | Same as Part 1 | Same as Part 1 |
| 4. Filer's Sources of Compensation Exceeding \$5,000 in a Year | Preceding Two Calendar Years to Filing Date (n/a for Candidates) | N/A – Leave this Part blank | N/A – Leave this Part blank | N/A – Leave this Part blank |
| 5. Spouse's Employment Assets & Income and Retirement Accounts | Preceding Calendar Year to Filing Date ¹ | Preceding Calendar Year | Same as Part 1 | Same as Part 1 |
| 6. Other Assets and Income | Preceding Calendar Year to Filing Date ¹ | Preceding Calendar Year | Same as Part 1 | Same as Part 1 |
| 7. Transactions | N/A – Leave this Part blank | Preceding Calendar Year ² | Same as Part 1 ² | Same as Part 1 ² |
| 8. Liabilities | Preceding Calendar Year to Filing Date ¹ | Preceding Calendar Year | Same as Part 1 | Same as Part 1 |
| 9. Gifts and Travel Reimbursements | N/A – Leave this Part blank | Preceding Calendar Year ³ | Same as Part 1 ³ | Same as Part 1 ³ |

1. For example, if today is March 3, 2019, the reporting period would run from January 1, 2018, to March 3, 2019. When valuing assets and liabilities, the filer may choose any date that is fewer than 31 days before the filing date.

2. Filers do not need to include any period when they were not a public financial disclosure filer or an employee of the United States Government.

3. Filers do not need to include any period when they were not an employee of the United States Government.

Extensions Do Not Change the Reporting Period

The reporting period is tied to a report's original due date and is unaffected by any extensions. For example, a New Entrant report was originally due December 14, 2019. The filer received a 30-day extension and filed January 8, 2020. The Part 2 reporting period would start on January 1, 2018, and end on December 14, 2019.

From: [Griffo, Shannon](#)
To: [Fugh, Justina](#)
Cc: [Campbell, Ann](#)
Subject: RE: Ale Nunez's recusal
Date: Tuesday, April 27, 2021 4:36:00 PM
Attachments: [Alejandra Nunez draft recusal statement 4_23_21.docx](#)

This is the working draft of Ale's recusal. Note that I've shared the financial conflicts language with her, but not this draft recusal statement. I'm going to take another close look at it and then send it to her this week to review. And hopefully I'll have an update on her divestiture (highlighted in the attached).

Ann, I'll be sure to share any other updated versions with you.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, April 27, 2021 3:13 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: FW: Ale Nunez's recusal

Hi Shannon,
Do you have a working draft of Ale's recusal? Don't make one if you don't have it ready, though.
Justina

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Tuesday, April 27, 2021 2:50 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Ale Nunez's recusal

Thanks for following up Justina. If it isn't too much hassle, it would be helpful to see the draft. Ale has been informing me where she thinks she's recused but it would be good as reference, at least until it's finalized.

Thank you,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, April 27, 2021 2:09 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: Ale Nunez's recusal

Hi Ann,

I checked, and her recusal is still in draft. We have a pending request for her to obtain a certificate of divestiture to sell off a particular asset, so we are holding the recusal until that actually occurs. Do you want to see the draft?

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: [Fugh, Justina](#)
To: [Griffo, Shannon](#)
Subject: RE: Invitation from the Clean Vehicles Coalition
Date: Monday, March 01, 2021 5:15:00 PM

Yes, I agree. (b) (5)

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, March 01, 2021 4:14 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Invitation from the Clean Vehicles Coalition
Here's another one about the pledge exception – (b) (5)

(b) (5)
Do you agree with that analysis?

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Monday, March 01, 2021 3:43 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: FW: Invitation from the Clean Vehicles Coalition

Good afternoon, Shannon,

As discussed earlier, here is the email thread regarding a request for Joe to join one of the weekly meetings of the Advisory Committee of the Clean Vehicles Coalition, which is set to take place tomorrow. The advisory committee is comprised of eight organizations, which include Sierra Club. Joe had wanted me to cover the meeting instead of him. (We all have a conflict tomorrow though, so I think we would have to reschedule this). Please let me know if it would be appropriate for me to attend this meeting.

As an aside, I had proposed for EPA to instead organize a regular stakeholder meeting and invite these organizations to attend, instead of Joe (or someone else) joining one of their "work" meetings. The Clean Vehicles Coalition is a large network of advocacy groups, and organizing a larger meeting

would also be more inclusive of their membership.
I appreciate your thoughts on this.
Many thanks.
Ale

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Friday, February 26, 2021 9:02 AM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: RE: Invitation from the Clean Vehicles Coalition

(b) (5) Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Friday, February 26, 2021 9:01 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Cc: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Subject: Re: Invitation from the Clean Vehicles Coalition

Will look through the email trail and check in with ethics - unless you already have Ale or wish to yourself. Whatever we do it would be best to have an official opinion.

Ann (Campbell) Ferrio
Chief of Staff
Office of Air and Radiation
(202) 566-1370

On Feb 26, 2021, at 8:56 AM, Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Thanks, Ale. Isn't it the case under the rules you can meet with a group of more than 5(?) entities even if SC is one of the group? Ann – please make a quick touch on this.
Thanks.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Friday, February 26, 2021 8:53 AM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Invitation from the Clean Vehicles Coalition

I think it would be fine, but I will have to recuse myself as my former employer is a member of this coalition.

Why don't we invite them to a regular EPA meeting instead? I will still have to recuse myself, but perhaps the coalition can bring other members as well (beyond their

advisory committee) and they could also meet with career staff.

From: Goffman, Joseph <Goffman.Joseph@epa.gov>

Sent: Thursday, February 25, 2021 10:48 PM

To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>

Subject: FW: Invitation from the Clean Vehicles Coalition

(b) (5)

Thanks.

Joseph Goffman

Acting Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency

From: Danielle Gagne <dgagne@partnershipproject.org>

Sent: Thursday, February 25, 2021 11:59 AM

To: David Friedman <david.friedman@consumer.org>

Cc: Goffman, Joseph <Goffman.Joseph@epa.gov>

Subject: Re: Invitation from the Clean Vehicles Coalition

Thanks, David!

Joe, happy to help facilitate a time that works best for you.

On Thu, Feb 25, 2021 at 10:57 AM David Friedman <david.friedman@consumer.org> wrote:

Hi and thank you Joe. It will be great to catch up.

I'm looping in the most excellent person helping us run the coalition, Danielle Gagne, to also help facilitate the connection and timing.

We'd love to invite you to our next advisory committee meeting, which is Tuesday at 2pm. And if that does not work, just let us know and we can be as flexible as possible.

Sincerely,

David

On Thu, Feb 25, 2021 at 7:55 AM Goffman, Joseph <Goffman.Joseph@epa.gov> wrote:

Hi, David and Dan. Great to connect. We will set something up. Thanks.

Sent from my iPhone

On Feb 25, 2021, at 7:51 AM, Utech, Dan <Utech.Dan@epa.gov> wrote:

Hi David – Thanks for your email. I'm cc'ing Joe, as I think that meeting with him and his team would be the best next step. Best,
Dan

From: David Friedman <david.friedman@consumer.org>

Sent: Wednesday, February 24, 2021 7:13 PM

To: Utech, Dan <Utech.Dan@epa.gov>

Subject: Re: Invitation from the Clean Vehicles Coalition

Hi Dan,

Our coalition just had a great call with Ali and Austin. As part of it he encouraged us to connect with EPA and the other agencies, so I wanted to take this chance to reach back out to see if we might set up a time for you to engage with us.

I am sure you are totally slammed, but it would be great for us to connect with you, and perhaps Joe, as it sounds like conversations with stakeholders and momentum are building up.

Also, so you know, multiple members of the coalition are sending a letter tomorrow to POTUS laying out support for moving forward on strong standards. While CR is not on that letter, we are supportive of many of the positions. So, walking through folks thinking on that and related issues could also be on the table for a good conversation.

Hope you are safe and well.

Sincerely,

David

On Fri, Feb 12, 2021 at 12:27 PM David Friedman

<david.friedman@consumer.org> wrote:

Hi Dan,

Congratulations again on your role and on Administrator-nominee Regan's successful committee vote. I hope you are settling in well and are drinking from only 5-6 fire hoses at once.

I represent Consumer Reports on the Clean Vehicles Coalition, which consists of leaders from health, environmental justice, equity, investor-linked, environmental and consumer groups. I wanted to invite you to join an upcoming meeting of our advisory committee for a brief conversation. It would be great for everyone to learn about your efforts at EPA and talk about the clean car standards. Would you be open to meeting with our group, perhaps next week?

This advisory committee consists of the American Lung Association, GreenforAll, Ceres, Union of Concerned Scientists, Environmental Defense Fund, NRDC, Sierra Club, and Consumer Reports.

I look forward to the chance to reconnect, at least virtually!

Hoping you are safe and well.

Sincerely,

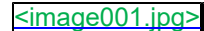
David

--

David Friedman

Vice President, Advocacy o (202) 462-6262 ext 7426

CR.org CR.org/advocacy



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David Friedman

Vice President, Advocacy o (202) 462-6262 ext 7426

CR.org CR.org/advocacy



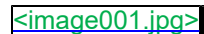
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--

David Friedman

Vice President, Advocacy o (202) 462-6262 ext 7426

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From: [Griffo, Shannon](#)
To: [Fugh, Justina](#)
Subject: CD Package for Signature - Alejandra Nunez
Date: Friday, April 23, 2021 10:01:00 AM
Attachments: [CD request form - Alejandra Nunez.pdf](#)
[CD Request Letter - Alejandra Nunez signed.pdf](#)
[Alejandra Nunez 2021 New Entrant Report.pdf](#)

Hi Justina,

The request for a CD for Ale Nunez is ready for Jim's signature. Attached are the following:

1. The formal request for a CD that needs a signature
2. Signed request from Ale
3. Her certified new entrant report

I think that's everything!

Thanks,
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: [Griffo, Shannon](#)
To: [Fugh, Justina](#)
Subject: RE: Nunez draft CD
Date: Wednesday, April 21, 2021 8:07:00 AM

I always appreciate your magic word dust! The only question I have is (b) (5)

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Tuesday, April 20, 2021 9:09 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Nunez draft CD

Hi,

I made two minor changes to the CD request (from Ale to Jim): (b) (5)

Justina

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, April 20, 2021 12:10 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Nunez draft CD

As discussed, here is Ale's draft CD request that I'd like you to review.

A few comments:

- (b) (5)

(b) (5)

- [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

I also attached the request letter that Ale needs to sign, but that's straightforward.

Thank you!

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: [Fugh, Justina](#)
To: [Conger, Nick](#); [Hackel, Angela](#)
Cc: [Grantham, Nancy](#)
Subject: RE: Alejandra Nunez's appointment
Date: Thursday, February 04, 2021 3:35:00 PM

Hi Nick (and Angela and Nancy)-

That's all fine with me. If you want a little more, then you can say that "Ms. Nunez received her initial ethics briefing from the Office of General Counsel, pursuant to 5 C.F.R. § 2638.304. Although the regulation provides up to 3 months to take that training, Ms. Nunez met this requirement in her first week."

Thanks!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Conger, Nick <Conger.Nick@epa.gov>
Sent: Thursday, February 04, 2021 3:01 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Alejandra Nunez's appointment

Hi. Adding Justina in. I am planning to (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Let me know of any concerns with that!

Nick Conger
Press Secretary
Environmental Protection Agency
202-941-1116 (mobile)

From: Hackel, Angela <Hackel.Angela@epa.gov>
Sent: Thursday, February 4, 2021 2:04 PM
To: Conger, Nick <Conger.Nick@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: RE: Alejandra Nunez's appointment

Hi Nick,

This is what OGC just provided. As you will see before they are seeking OPA's guidance. Please let me know if you need anything additional from me.

Thanks,

Angela

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, February 4, 2021 1:26 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Conrad, Daniel <conrad.daniel@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>

Subject: RE: Press Inquiry: Alejandra Nunez's appointment

Hi Angela,

Yesterday, Shannon Griffo of Team Ethics heard from Tomas Carbonell about this. We also heard that Lindsay Hamilton wondered whether recusal statements were posted to the EPA website. Here's the story on that:

BACKGROUND

I've been the ethics counsel since 2006 and, for years, no one asked for copies of any recusal statements. That all changed in 2017 with the Trump Administration. We saw burgeoning external interest in ethics documents (e.g., recusal statements, impartiality determinations, waivers, etc.). The traditional process for providing these documents, which are releasable, to inquiring citizens is through FOIA, which is what we've been doing. (b) (5)

It's important to note that recusal statements reflect not only the principal's ethics obligations regarding his or her prior employer or clients but also must reflect financial conflicts of interest and loss of impartiality concerns. (b) (5)

WHERE WE ARE NOW

There is no recusal statement yet for any political appointee but they have been advised of their ethics --including recusal -- obligations. (b) (5)

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Conger, Nick <Conger.Nick@epa.gov>

Sent: Thursday, February 4, 2021 1:22 PM

To: Hackel, Angela <Hackel.Angela@epa.gov>

Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>

Subject: Re: Alejandra Nunez's appointment

Ok thanks for the update

Nick Conger
EPA Press Secretary
202-941-1116

On Feb 4, 2021, at 1:16 PM, Hackel, Angela <Hackel.Angela@epa.gov> wrote:

Hi Nick,

I wanted to let you know that OGC is still working on this. They have looped in Justina Fugh the ethics attorney, who will be providing me more context. I will let you know once I hear back from her.

I realize that the deadline is COB today. I will get back to you, with the information I receive, as soon as I am able.

Thanks,

Angela
Angela Hackel
Senior Advisor
Office of the Administrator
Office of Public Affairs
U.S. Environmental Protection Agency
Washington, DC 20460
Office: 202.566.2977
Cell: 202.763.3945

From: Conger, Nick <Conger.Nick@epa.gov>
Sent: Wednesday, February 3, 2021 12:08 PM
To: Hackel, Angela <Hackel.Angela@epa.gov>
Cc: Grantham, Nancy <Grantham.Nancy@epa.gov>
Subject: FW: Alejandra Nunez's appointment

I can check with OAR on #1, but Angela, can you run #2 by OGC?

Nick Conger
Press Secretary
Environmental Protection Agency
202-941-1116 (mobile)

From: Sean Reilly <sreilly@eenews.net>
Sent: Wednesday, February 3, 2021 11:59 AM
To: Hamilton, Lindsay <Hamilton.Lindsay@epa.gov>; Conger, Nick <Conger.Nick@epa.gov>
Subject: Alejandra Nunez's appointment

Lindsay, Nick:

1) As noted in my earlier email, I'm now working on a story that will look both at Ms. Nunez's and Mr. Carbonell's appointments. In regard to Ms. Nunez's appointment, I had a couple of questions:

1) Will EPA make her available for an interview? If not, does she have any comment on her

plans in her new position?

2) Like Mr. Carbonell, she was recently an attorney of record in litigation against EPA. If she has already submitted a recusal statement, can I get a copy without going through the FOIA process?

My deadline is COB tomorrow. Please let me know if you need any further information.

Thanks,

Sean

Sean Reilly

Reporter

E&E News

(b) (6) (Cell)

202-446-0433 (Desk)

Skype: Sreilly_69

sreilly@eenews.net

Twitter: @SeanatGreenwire

From: [Goffman, Joseph](#)
To: [Clarke, Victoria](#); (b) (6)
Cc: (b) (6)
Subject: RE: CD Request Letter
Date: Thursday, April 29, 2021 2:34:24 PM
Importance: High

Thanks so much, (b) (6) and Victoria. (b) (6)

(b) (6)

(b) (6)

- (b) (6)
- (b) (6)
- (b) (6)
- (b) (6)
- (b) (6)

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Thursday, April 29, 2021 2:29 PM
To: (b) (6) Goffman, Joseph
<Goffman.Joseph@epa.gov>; (b) (6)
Cc: (b) (6)

Subject: RE: CD Request Letter

Hi (b) (6)

(b) (6)

Thank you!
Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: (b) (6) (b) (6)
Sent: Thursday, April 29, 2021 2:27 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>; Goffman, Joseph <Goffman.Joseph@epa.gov>;
(b) (6)
Cc: (b) (6)

Subject: RE: CD Request Letter

Good Afternoon,

We will (b) (6)

(b) (6)

(b) (6)

Please let me know if you have any questions.

Thanks

(b) (6)

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Tuesday, April 6, 2021 3:18 PM

To: Goffman, Joseph <Goffman.Joseph@epa.gov>; (b) (6)

Cc: (b) (6)

Subject: RE: CD Request Letter

(b) (6), (b) (3) (A)

Sorry for the inconvenience, everyone!

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: Goffman, Joseph <Goffman.Joseph@epa.gov>

Sent: Wednesday, March 31, 2021 8:21 PM

To: (b) (6)

Cc: Clarke, Victoria <clarke.victoria@epa.gov>; (b) (6)

Subject: FW: CD Request Letter

Hi, (b) (6). In order to be in compliance with my obligations here, (b) (6) and I will have to sell certain stocks. We will be able to seek a certificate of divestiture that would allow us to avoid paying capital gains tax, and EPA's Ethics Counsel, Victoria Clarke, will be taking care of compiling the paper work to do so. It would be extremely helpful if you each took a look at the table in the attached Word document and for each stock in the respective portfolios you manage you were able to fill in the information requested in the table.

Please also take a look at Victoria's email below for her question about the circumstances under which the stock was acquired.

Please let me know if you have any concerns doing this.

Finally, Victoria, (b) (6); no change has been made.

Many thanks.

Best,

Joe

Joseph Goffman

Acting Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Wednesday, March 31, 2021 3:52 PM

To: Goffman, Joseph <Goffman.Joseph@epa.gov>

Cc: (b) (6)

Subject: CD Request Letter

Hi there!

I am putting together the CD request letter to company the CD request form.

I have all the stocks identified, but what I need to know is how many shares you have, who owns them, what that person's relationship is to you (my guess either you own them, or it will be your wife, in which case, the relationship is spouse!).

Additionally, we'll need to describe the circumstances by which you came to own the shares. The majority of them you possessed prior to your government employment, (b) (6)

. If the assets are held in a trust, we'll need the underlying trust documents. (b) (6)

Victoria

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

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Although we attempt to sweep e-mail and attachments for viruses, we do not guarantee that either are virus-free and accept no liability for any damage sustained as a result of viruses.

Please refer to (b) (6) for certain disclosures relating to European legal entities. We take our data protection and privacy responsibilities seriously and our privacy notice explains how we collect, use and share personal information in the course of our business activities. It can be accessed at the privacy section of (b) (6)

From: [Clarke, Victoria](#)
To: [Fugh, Justina](#)
Subject: RE: Goffman CD Packet
Date: Monday, May 03, 2021 8:43:00 AM

Yes, hard to redline in this PDF – but I like all of the changes! I'll finalize for Tuesday.

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, April 30, 2021 6:26 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Goffman CD Packet

Hi,

Oh, good job! Here are some suggestions, but I couldn't figure out redline/strikeout. **|**

[REDACTED]

See what you think.

Justina

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Friday, April 30, 2021 2:55 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Goffman CD Packet

I've got everything ready in the [I:Drive](#) and have sent the request letter we looked at this morning (now with digital signature!) to Joe so that he can sign.

You will need to sign the CD request form, which is attached. **(b) (5), (b) (6)**

[REDACTED]

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: [Goffman, Joseph](#)
To: [Clarke, Victoria](#)
Subject: RE: Sales
Date: Friday, April 30, 2021 2:55:51 PM
Attachments: [3. Employee Request Letter - Goffman SIGNED.pdf](#)

Thank you!

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Friday, April 30, 2021 2:47 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: RE: Sales

Hi Joe,

I've got your request letter all prepared and ready for your digital signature.
I have the other materials all ready to go, just putting them together now for Justina to do the final once-over before I submit to OGE.

Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Goffman, Joseph <Goffman.Joseph@epa.gov>
Sent: Wednesday, April 28, 2021 4:37 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: Sales

As always, Victoria, I am so very grateful for our help and diligence in all this.

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Clarke, Victoria <clarke.victoria@epa.gov>
Sent: Wednesday, April 28, 2021 4:24 PM
To: Goffman, Joseph <Goffman.Joseph@epa.gov>
Subject: FW: Sales

And on that note, Joe, (b) (6), (b) (5)



So, no other work or documents need to be provided by you. When the letter is ready to be signed, I'll send it to you for digital signature.
Victoria Clarke

Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

From: Clarke, Victoria

Sent: Wednesday, April 28, 2021 4:22 PM

To: (b) (6) Goffman, Joseph
<Goffman.Joseph@epa.gov>

Subject: RE: Sales

That is correct. Don't sell until we have the CD from OGE.

Victoria Clarke

Attorney-Advisor

U.S. Environmental Protection Agency

Office of General Counsel | Ethics Office

Washington, D.C. | 7348 WJCN

EPA Office: 202-564-1149

EPA Cell: 202-336-9101

From: (b) (6)

Sent: Wednesday, April 28, 2021 4:06 PM

To: Goffman, Joseph <Goffman.Joseph@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>

Subject: Sales

Hi Joe,

I was just going to send email about divesting; just to confirm, we are still waiting for notice that the the CD has been issued before selling, correct?

Thanks,

(b) (6)

[Redacted signature block]

From: Goffman, Joseph <Goffman.Joseph@epa.gov>

Sent: Wednesday, April 28, 2021 3:17 PM

To: (b) (6)

[Redacted recipient list]

Subject: FW: Thoughts/Update on your CD

(b) (6)

(b) (6)

Joseph Goffman
Acting Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency

From: Clarke, Victoria <clarke.victoria@epa.gov>

Sent: Wednesday, April 28, 2021 2:58 PM

To: Goffman, Joseph <Goffman.Joseph@epa.gov>

Subject: Thoughts/Update on your CD

Hi Joe,

Just to keep you informed of where we are on the CD, (b) (6), (b) (3) (A)

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

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(b) (6) claims compliance with the Global Investment Performance Standards (GIPS®). A compliant presentation is available at (b) (6). Past performance is not indicative of future results.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

April 8, 2021

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Joseph Goffman
Acting Assistant Administrator

TO: Michael S. Regan
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed.

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Harvard University**, is a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."¹ Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

¹ See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Particular Matters Involving Specific Parties

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that affects any of following entities as a specific party:

| RECUSAL LIST – SPECIFIC PARTY MATTERS | | | |
|---------------------------------------|------------------------|-------------------------------|------------------------|
| Abbot Laboratories | Abbvie | Accenture PLC | Agilent Technologies |
| Alphabet Inc | Altria Group | Amazon | American Express |
| Ameriprise Financial | Apple, Inc. | Arthur J Gallagher | AT&T |
| Becton Dickinson | Broadcom Inc | Canadian National RY | Centene Corp |
| Champion X Corp | Charter Communications | Cisco Systems | Colgate Palmolive |
| Comcast | Costco | Danaher Corp | Deere & Co. |
| Discover Financial | Disney | Dollar Tree Inc | Dover Corp |
| Eaton Corp | Ecolab Inc. | Facebook | Fidelity |
| First Rep Bank | Fortive Corp. | Glaxo Smith Kline | Home Depot |
| IBM | Intel Corp | Johnson & Johnson | JP Morgan Chase |
| Lab Co of America Holding | Markel Corp | Martin Marietta Materials Inc | Meditronic PLC |
| Merck & Co. | Mettler Toledo Intl | Microsoft | Mondelez International |
| Monster Beverage | Nestle S.A. | Nike | Novartis AG |
| NVIDIA Corp | Omnicom Group | PayPal | PepsiCo |
| Pfizer Inc. | Philip Morris | Proctor & Gamble Co. | PNC Financial |
| Qualcomm INC | Roche Holding AG | Roper Technologies | SalesForce |
| Sherwin Williams | Skyworks Solutions | Spotify | Starbucks Corp |
| State Street | Texas Instruments | TJX | Truist Financial Corp |
| United Health Group | US Bancorp | Verizon Comm | Visa |
| Wells Fargo | Zoetis, Inc. | | |

Particular Matters of General Applicability

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

| RECUSAL LIST – INDIVIDUAL SECTORS | | |
|------------------------------------|--------------------------------------|-------------------------------|
| Advertising | Apparel | Banking |
| Communications Equipment | Credit Services | Discount Stores |
| Entertainment | Farm & Heavy Construction Machinery | Footwear |
| Healthcare Plans | Home Improvement Retail | Household & Personal Products |
| Information Technology Services | Insurance | Internet Content |
| Internet Retail | Non-Alcoholic Beverages | Packaged Foods |
| Paint | Pharmaceuticals & Drug Manufacturing | Restaurants |
| Scientific & Technical Instruments | Semiconductors | Snack Food |
| Snack Food | Software | Specialty Chemicals |
| Specialty Industrial Machinery | Specialty Industrial Machinery | Telecom Services |
| Tobacco | | |

Corporate Bonds

I am recused from participating in any particular matter that will have a direct and predictable financial effect upon the ability and willingness of the following bond issuers to honor their obligations or that will affect their bond ratings:

| RECUSAL LIST – BONDS | | | |
|------------------------------|----------------|-----------------------|--------------------------|
| Amgen, Inc. | Anthem, Inc. | Apple, Inc. | Comcast Corporation |
| General Dynamics Corporation | Morgan Stanley | Starbucks Corporation | State Street Corporation |

Certificate of Divestiture

I intend to seek a certificate of divestiture and will update this recusal statement when my financial situation changes.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Ann Ferrio, Chief of Staff, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Chief of Staff without my knowledge or involvement.

If the Chief of Staff determines that a particular matter will directly involve any of the entities or issue areas on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Elizabeth Shaw, Deputy Assistant Administrator
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources
Alejandra Nunez, Deputy Assistant Administrator for Mobile Sources
Ann (Campbell) Ferrio, Chief of Staff
Eunjung Kim, Special Assistant
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Updated Recusal Statement

FROM: Joseph Goffman
Acting Assistant Administrator

JOSEPH
GOFFMAN

Digitally signed by
JOSEPH GOFFMAN
Date: 2021.06.30
12:48:36 -04'00'

TO: Michael S. Regan
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed. This recusal statement replaces and supersedes the recusal statement I signed on April 8, 2021.

OBLIGATIONS UNDER EXECUTIVE ORDER 13989

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Harvard University**, is a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."¹ Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

¹ See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Particular Matters Involving Specific Parties

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that affects any of following entities as a specific party:

| RECUSAL LIST – SPECIFIC PARTY MATTERS | | | |
|---------------------------------------|-------------------------------|------------------------|---------------------------|
| Abbot Laboratories | Abbvie | Accenture PLC | Agilent Technologies |
| Alphabet Inc | Altria Group | Amazon | American Express |
| Ameriprise Financial | Apple, Inc. | Arthur J Gallagher | AT&T |
| Becton Dickinson | Centene Corp | Charter Communications | Cisco Systems |
| Colgate Palmolive | Comcast | Costco | Danaher Corp |
| Deere & Co. | Discover Financial | Disney | Dollar Tree Inc |
| Facebook | Fidelity | First Rep Bank | Glaxo Smith Kline |
| IBM | Johnson & Johnson | JP Morgan Chase | Lab Co of America Holding |
| Markel Corp | Martin Marietta Materials Inc | Meditronic PLC | Merck & Co. |
| Mettler Toledo Intl | Microsoft | Mondelez International | Monster Beverage |
| Nestle S.A. | Nike | Novartis AG | Omnicom Group |
| PayPal | PepsiCo | Pfizer Inc. | Philip Morris |
| Proctor & Gamble Co. | PNC Financial | Roche Holding AG | SalesForce |
| Sherwin Williams | Spotify | Starbucks Corp | State Street |
| TJX | Truist Financial Corp | United Health Group | US Bancorp |
| Verizon Comm | Visa | Wells Fargo | Zoetis, Inc. |

Particular Matters of General Applicability

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

| RECUSAL LIST – INDIVIDUAL SECTORS | | |
|---|---------------------------------------|--|
| Agricultural & Farm Machinery | Apparel, Accessories, & Footwear | Banks |
| Commodity Chemicals (Paint) | Construction Machinery & Heavy Trucks | Construction Materials |
| Cruise lines | Diversified Financials | Food & Staples Retailing |
| Healthcare Equipment & Services | Household & Personal Products | Household Appliances (lawn & garden tools) |
| Insurance | Internet & Direct Marketing Retail | Logistics |
| Media & Entertainment (including interactive media and services, and advertising) | Non-Alcoholic Beverages | Packaged Foods & Meats (snack food) |
| Pharmaceuticals, Biotechnology, & Life Sciences | Professional Services | Software & Services |
| Technology Hardware & Equipment | Telecommunication Services | Tobacco |

Corporate Bonds

I am recused from participating in any particular matter that will have a direct and predictable financial effect upon the ability and willingness of the following bond issuers to honor their obligations or that will affect their bond ratings:

| RECUSAL LIST – BONDS | | | |
|------------------------------|----------------|-----------------------|--------------------------|
| Amgen, Inc. | Anthem, Inc. | Apple, Inc. | Comcast Corporation |
| General Dynamics Corporation | Morgan Stanley | Starbucks Corporation | State Street Corporation |

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Ann Ferrio, Chief of Staff, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Chief of Staff without my knowledge or involvement.

If the Chief of Staff determines that a particular matter will directly involve any of the entities or issue areas on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Elizabeth Shaw, Deputy Assistant Administrator
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources
Alejandra Nunez, Deputy Assistant Administrator for Mobile Sources
Ann (Campbell) Ferrio, Chief of Staff
Eunjung Kim, Special Assistant
Justina Fugh, Director, Ethics Office